

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

FROM: Family and Juvenile Law Advisory Committee
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SUBJECT: Family Law: Privacy Notices and Domestic Partnership Dissolution,
Legal Separation, and Annulment Procedures (adopt Cal. Rules of
Court, rule 5.28; amend rule 5.102; adopt forms FL-103 and FL-123;
approve form FL-316; revise forms FL-100, FL-110, FL-115, FL-117,
FL-120, FL-142, FL-145, FL-150, FL-160, FL-165, FL-170, FL-180,
FL-190, FL-310, FL-311, FL-341, FL-341(B), FL-341(C), FL-341(D),
FL-341(E), FL-343, FL-344, FL-345, FL-435, and FL-450)
(Action Required)

Issue Statement

This proposal contains rules and forms from two separate circulations for comment which address two separate legislative mandates as they contain many overlapping forms. Assembly Bill 205 (Stats. 2003, ch. 421), the California Domestic Partner Rights and Responsibilities Act of 2003, modifies the procedures for terminating domestic partnerships. Proposed rules 5.28 and 5.102 would make explicit the forms to be used for terminating a domestic partnership and would identify the parties to the proceeding. The proposed new and revised forms would be used by domestic partners to obtain a dissolution, a legal separation, or an annulment under the new statute.

Urgency legislation enacted on June 7, 2004, Assembly Bill 782 (Stats. 2004, ch. 45), requires the Judicial Council to add notices to family law forms that parties may redact their social security numbers from all written materials in their case other than forms to enforce child or spousal support. The legislation further requires the council to add a question to forms in which parties list their assets and debts, asking whether identifying or locating information is available on those forms. This question is designed to allow either party to request that the form containing such identifying information be placed under seal. The attached forms include these required changes. Also, a new form is proposed to simplify the process of sealing forms covered under this statute.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2005, adopt rule 5.28 of the California Rules of Court; amend rule 5.102; adopt forms FL-103, FL-123 and FL-316; and revise forms FL-100, FL-110, FL-115, FL-117, FL-120, FL-142, FL-145, FL-150, FL-160, FL-165, FL-170, FL-180, FL-190, FL-310, FL-311, FL-341, FL-341(B), FL-341(C), FL-341(D), FL-341(E), FL-343, FL-344, FL-345, FL-435, and FL-450 to allow domestic partners to obtain a dissolution, a legal separation, or an annulment and to provide privacy protections to family law litigants.

The text of the proposed rules and copies of the proposed forms are attached at pages 11– 65.

Rationale for Recommendation

This proposal contains rules and forms that were circulated in two separate cycles, one the regular spring cycle, and one a special cycle to respond to urgency legislation as they contain overlapping forms. The first circulation responded to legislative requirements regarding the dissolution of domestic partnership. The second, special circulation, responded to legislation regarding privacy notices.

Domestic Partnership Rules and Forms

AB 205 contains many provisions designed to provide domestic partners with the same rights and responsibilities as spouses. Specifically, new Family Code section 299(d) provides that “dissolution of a domestic partnership, nullity of a domestic partnership, and legal separation of partners in a domestic partnership shall follow the same procedures, and the partners shall possess the same rights, protections, and benefits, and be subject to the same responsibilities, obligations, and duties, as apply to the dissolution of marriage, nullity of marriage, and legal separation of spouses in a marriage. . . .”

Proposed new rule 5.28 indicates that, other than the initial petition and response, the same forms are to be used for dissolutions, legal separations, and annulments of domestic partnerships as are used for dissolutions, legal separations, and annulments of marriages. In addition, pending the revision of all family law forms and rules, rule 5.28(b) would make it clear that in any family law rules or forms the terms “spouse,” “husband,” “wife,” “father,” “mother,” “marriage,” and “marital status” should be considered to encompass “domestic partner,” “parent,” or “domestic partnership,” as applicable.

Rule 5.102 would be amended to reflect the fact that domestic partners can file for dissolution, legal separation, or annulment of their domestic partnership and to indicate that the parties to those proceedings are the domestic partners themselves.

The forms required for dissolution, legal separation, and annulment have been reviewed to determine whether they are gender-neutral and the revisions that would be required to allow their use for termination of a domestic partnership. Most family law forms do not need to be revised, since they use the gender-neutral terms “petitioner” and “respondent” rather than “husband” and “wife” or “mother” and “father.” Those that are not gender neutral would be modified accordingly. All forms that refer to “spousal support” would be modified to refer to “partner or spousal support.” Custody and visitation forms FL-311, FL-341, FL-341(B), FL-341(C), FL-341(D), and FL-341(E) would be revised to refer to “petitioner” and “respondent” rather than to “mother” and “father.”

The committee recommends that the same forms be used for dissolutions, legal separations, and annulments of domestic partnerships as are used for dissolutions, legal separations, and annulments of marriages – with two exceptions. The unique forms *Petition – Domestic Partnership (Family Law)* (form FL-103) and *Response – Domestic Partnership (Family Law)* (form FL-123) should be adopted because of procedural differences between a divorce of married persons and a divorce of domestic partners.

Those differences concern residency of parties and voluntary declarations of paternity. Specifically, Family Code section 299(d) provides that, “in accordance with the consent acknowledged by domestic partners in the Declaration of Domestic Partnership form, proceedings for dissolution, nullity, or legal separation of a domestic partnership registered in this state may be filed in the superior courts of this state even if neither domestic partner is a resident of, or maintains a domicile in, the state at the time the proceedings are filed.” Therefore questions about residence of the parties are required only for those who established their domestic partnership or the equivalent outside the state of California. Additionally, voluntary declarations of paternity would not be used for parents of the same gender; thus, questions regarding those declarations have been eliminated from forms FL-103 and FL-123.

The committee followed the direction of section 15 of AB 205 to construe the act “liberally in order to secure to eligible couples who register as domestic partners the full range of legal rights, protections and benefits, as well as all of the responsibilities, obligations, and duties to the other, to their children, to third parties and to the state, as the laws of California extend to and impose upon spouses.” All procedural protections – such as the requirement in Family Code section 2100 et seq. to disclose all assets, debts, income, expenses and business opportunities to the other spouse – are therefore applied to domestic partners.

Family Code section 299(a) sets out a procedure for an administrative termination of a domestic partnership with the Secretary of State if the parties meet the requirements of that section. Those statutory requirements parallel the restrictions on summary dissolution of a marriage set out in Family Code section 2400. Since the

forms for summary dissolution (FL-800 through FL-830) would not be used in cases involving domestic partners, they have not been revised.

Certain additional technical changes to the forms are proposed, including a reference to the new Servicemembers Civil Relief Act of 2003 in place of the Soldiers' and Sailors' Civil Relief Act of 1940.

Although all forms used in dissolution, legal separation, and annulment have been reviewed, the forms for governmental child support and simplified support modification are not proposed for change at this time because they are slated for more significant revisions in January 2006 as part of the plain-language project. Any changes necessary to make those forms gender - neutral will be proposed at that time.

Privacy Notices Forms

Assembly Bill 782 (Kehoe; Stats. 2004, ch. 45) was chaptered as urgency legislation on June 7, 2004. It repealed Family Code section 2024.5, which required the Judicial Council to develop a form to be filed with any petition or first responsive pleading in a dissolution, legal separation, or nullity action that lists the social security numbers (known to the party) of the petitioner, the respondent, and any minor child of the parties. Form FL-102, *Confidential Declaration of Social Security Numbers (Family Law)*, which was designed to meet that requirement and was approved by the Judicial Council to take effect July 1, 2004, was repealed by the council on June 23, 2004. AB 782 also added new Family Code sections 2024.5 and 2024.6.

New Family Code section 2024.5 provides that a party may redact any social security number from any written material filed with the court regarding a petition for dissolution of marriage, nullity, or legal separation. The section directs that the "Judicial Council form used to file such a petition, or a response to such a petition, shall contain a notice that the parties may redact any social security numbers from those pleadings, attachments, documents, or other material filed with the court." Family Code section 2024.5(b) makes an exception to prevent a party from redacting a social security number from an *Abstract of Support Judgment* (form FL-480) or any similar form created for the purpose of collecting child or spousal support payments. The Family and Juvenile Law Advisory Committee proposes that the *Petition (Family Law)* (form FL-100) and *Response (Family Law)* (form FL-120) be revised to provide notices to the parties that they may redact their social security numbers from any written material filed with the court in their case other than a form used to collect child or spousal support.

Five other changes were proposed to forms FL-100 and FL-120. The first is to move the notice regarding the interest charged on delinquent child support from the first page to the second page (to become item 7 of the *Petition* and item 10 of the *Response*), where it follows the notice regarding ordering child support.

The second is to delete item 5(b) regarding community property, which provides an option for a party to state that “All such assets and debts have been disposed of by written agreement.” Under Family Code section 2105, the parties must exchange final declarations of disclosure or waive those declarations before they can enter into an agreement for the resolution of property or support orders, other than temporary support. Under Family Code section 2104, they cannot serve a preliminary declaration for disclosure until the service of the *Petition*. Thus, this item is misleading.

The third proposed change is to modify the requests regarding child visitation, at item 7(c) in the *Petition* and 9(c) in the *Response*, to indicate that the parties may file attachments regarding more specific custody and visitation options.

A fourth change is to clarify at item 8 in the *Petition* and item 10 in the *Response* that, in order to make orders regarding child support, the court will need additional information about the finances of the parties. This is designed to address a concern that parties incorrectly assume, based on the current language, that the court will make child support orders on its own motion.

The fifth change is to add a new item 7 to the *Response* (form FL-120) to allow the respondent to allege that there never was a legal marriage.

The committee proposes that domestic partnership forms be similarly revised. While Family Code section 2045.5 specifically refers only to petitions for dissolution of marriage, nullity of marriage, or legal separation, Family Code section 299(d), which will become effective January 1, 2005, provides that “the dissolution of a domestic partnership, nullity of a domestic partnership, and legal separation of partners in a domestic partnership shall follow the same procedures, and the partners shall possess the same rights, protections, and benefits, and be subject to the same responsibilities, obligations, and duties, as apply to the dissolution of marriage, nullity of marriage, and legal separation of spouses in a marriage. . . .” The committee proposes that forms FL-103, *Petition –Domestic Partnership (Family Law)* and FL-123, *Response–Domestic Partnership (Family Law)* (form FL-123), contain the same notices regarding social security numbers and otherwise be conformed to the petition and response for dissolution, legal separation, and nullity of marriage.

Thus, several forms that were circulated in the set of domestic partnership forms described above were recirculated with the proposed privacy notices and modifications made as a result of the comments received when those forms were originally circulated between April 4, 2004, and June 4, 2004.

New Family Code section 2024.6(b) mandates that the Judicial Council form used to declare the assets and liabilities of the parties in a proceeding for dissolution of marriage, nullity of marriage, or legal separation of the parties require the party filing

the form to state whether the form contains identifying or locating information on the assets and liabilities listed.

The Judicial Council forms used for this purpose are the *Property Declaration (Family Law)* (form FL-160) and *Schedule of Assets and Debts (Family Law)* (form FL-142). An additional question is proposed for the *Property Declaration*, asking the person completing the form whether the form contains identifying information about the assets and debts listed. However, the *Schedule of Assets and Debts* is designed as an attachment to *Form Interrogatories (Family Law)* (form FL-145) or *Declaration of Disclosure* (form FL-140) neither of which are filed with the court. Without identifying information, form FL-142 would not be particularly helpful; thus, a warning that the form should not be filed with the court has been added.

The *Income and Expense Declaration* (form FL-150) requests information about the debts that the litigant is paying, including to whom the debt is owed, and the balance of the debt. An additional question has been added to determine whether identifying information is contained in the declaration. The admonition on the first and second pages of the form to cross out the social security number on any pay stub submitted as an attachment would be in bold. The *Financial Statement – Simplified* (form FL-155) requests no information about the debts of the parties and already has a boldface warning regarding crossing out social security numbers on attached pay stubs, so no changes are recommended for that form.

Two additional Judicial Council forms, *Property Order Attachment to Findings and Order After Hearing (Family Law)* (form FL-344) and *Property Order Attachment to Judgment (Family Law)* (form FL-345), may contain identifying information about or location of the assets and debts of a party. An additional question is proposed for each form, asking the person completing the form whether it contains identifying information about the assets and debts listed.

New Family Code section 2024.6(a) provides that, “[u]pon request by a party to a petition for dissolution of marriage, nullity of marriage, or legal separation, the court shall order a pleading that lists the parties’ financial assets and liabilities and provides the location or identifying information about those assets and liabilities sealed. The request may be made by ex parte application.” To assist parties in sealing the affected documents, the committee proposes new optional form *Ex Parte Application and Order to Seal Financial Forms in Court File (Family Law)* (form FL-316). This form is designed to state the basis for the application and list the specific forms to be sealed. It would assist court clerks in locating the forms and make it clear that the entire file is not to be sealed. It would also help clarify that this procedure for sealing is one of the exceptions noted in rule 243.1(a)(2) of the California Rules of Court.

Alternative Actions Considered

A separate set of forms for domestic partnerships was considered but was rejected because it would involve the creation of so many new forms and make updating problematic.

Comments From Interested Parties

An invitation to comment on the proposal containing forms for the domestic partnership dissolution, legal separation, and annulment forms was circulated from April 5, 2004, through June 4, 2004, to the standard mailing list for family and juvenile law proposals as well as to the regular rules and forms mailing list. Together these lists include judges, court administrators, attorneys, social workers, probation officers, mediators, and other family and juvenile law professionals. The proposal was also circulated to legal services organizations and the Judicial Council's Access and Fairness Advisory Committee.

An invitation to comment on the proposal containing forms for privacy notices on family law forms was circulated to the same recipients in a special cycle from July 30 through August 20, 2004.

Comments on Domestic Partnership Forms

Seven written comments were received. Six commenters agreed with the proposal on the condition that the forms be modified. One agreed without requesting changes. None disagreed. A chart of the comments received and the committee's responses is attached at pages 66-71.

One commenter suggested that there should be a separate set of forms for persons in domestic partnerships, to minimize confusion among persons filing for divorce. The committee considered this option but did not want to propose adopting the 20 or more new Judicial Council forms that would be required for a separate procedure for domestic partnership dissolutions and legal separations. All family law forms are potentially used by domestic partners, and the clear intention of the law is to follow the same procedures as for married couples. For the most part, the changes to the existing forms are minor and do not seem to add as much complexity as a separate set of forms would.

Two commenters pointed out a typographical error in which the term "spousal support" remained in a provision that should have referred to "partner support." That error has been corrected. Another suggested that space for a telephone number be added to form FL-117, *Notice of Acknowledgment and Receipt*, so that the court might verify the litigant's awareness that a default is being entered. Another commenter noted that the Spanish translation is inaccurate, which is true since the translation will not be completed until the English version is finalized.

That commenter also raised the question of whether "physical incapacity" could be a ground for annulment in a case of a same-sex couple. The committee determined

that, while this issue might be one for ultimate determination by the courts, it appears that the statutory provisions and case law noted in *Stepanek v. Stepanek* (1961) 193 Cal.App.2d 760 (1961) indicate that the standard for incapacity is not procreation but whether the parties were able to consummate their relationship. Thus, physical incapacity may indeed be a ground for annulment of a same-sex domestic partnership. Additionally, Family Code section 297(b)(5)(B) provides that heterosexual couples may be domestic partners in some situations. Physical incapacity would clearly be an appropriate ground for those couples, as well.

Another commenter noted that the waiver of residency requirements pertains only to cases involving those who established their domestic partnership in California. The committee modified the forms accordingly. That commenter also raised concerns about listing the optional forms to establish terms of visitation and custody. The committee made changes to the form to clarify that attaching those forms is optional.

Comments on Privacy Notices

Twenty-four comments were received in response to the special circulation of privacy notices. All commenters agreed with the basic changes, and many had specific suggestions for improvements to the forms. A number of commenters noted that they were pleased to see these new privacy protections offered to family law litigants. A chart of the comments received and the committee's responses is attached at pages 72-94.

Many of the suggestions involved moving lines, rephrasing questions to make them easier for self-represented litigants to answer, and making other fairly technical changes. These changes were considered and generally accepted as noted in the comment chart attached. A few comments related to the domestic partnership forms, and they were analyzed in the same manner as the comments described above.

Several questions were raised about the new procedures for sealing documents. Based upon review of the statute, the committee determined that parties should be required to file an *Ex Parte Application and Order to Seal Financial Forms* (form FL-316) listing specific forms, rather than make a blanket request for the sealing of any document with identifying or location information filed in the future. A blanket procedure also would be more challenging for clerks and would potentially impose more than ministerial duties upon them. Check boxes have been added to the order proposed on form FL-316 so that a judge can more easily identify which forms should be sealed.

In addition, the committee determined that, according to the terms of the statute, any pleading that one party requests sealed must be served on the other party. The committee has also added a requirement to form FL-316 that parties lodge with the court clerk, a copy of any previously filed document that they want sealed to make it easier for judges to identify which documents should be sealed.

Based on the comments, the committee has added the question regarding whether the pleading contains identifying or locating information to the proposed *Judgment (Family Law)* (form FL-180). It also added a sentence to that question, notifying litigants that if the document does contain identifying information, that form may be sealed by filing an *Ex Parte Application and Order to Seal Financial Forms* (form FL-316).

One commenter suggested that a form to request that a document be “unsealed” be developed. The committee agreed to propose such a form for the July 1, 2005 cycle.

Implementation Requirements and Costs

The costs associated with this proposal are the costs of printing new forms and sealing portions of files. These costs are required by the statute.

Attachments